



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2003

Ms. Susan C. Rocha
Denton, Navarro, Rocha & Bernal
2517 N. Main Avenue
San Antonio, Texas 78212

OR2003-7566

Dear Ms. Rocha:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189844.

The Alamo Area Council of Governments ("AACOG"), which you represent, received a request for all information relating to the requestor's past association with AACOG. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.1175, 552.122, 552.136, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the submitted information. We have also considered written comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that member of public may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the common-law right of privacy. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information

¹ You have submitted no arguments in support of your claims that sections 552.103, 552.107, 552.108, and 552.111 apply to except any of the requested information. Therefore, you have waived any claim of exception from disclosure under these sections of the Government Code. *See* Gov't Code §§ 552.301, .302. We further note that you do not submit arguments in support of your claims that sections 552.102, 552.1175 and 552.136 apply to except any information, and we find that these exceptions are inapplicable to the submitted documents. *See* Gov't Code §§ 552.102, 552.1175, 552.136.

must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. 540 S.W.2d at 685. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

This office has also found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information, or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and personal financial information pertaining to voluntary financial decisions and financial transactions that do not involve public funds, *see* Open Records Decision Nos. 600 (1992), 545 (1990). We have marked the information that is private and must be withheld under section 552.101. We find that none of the remaining information is protected under the common-law right to privacy, and thus, it may not be withheld under section 552.101.

Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that this information be kept confidential under section 552.024. Gov't Code § 552.117(a)(1). You have indicated that all of the home address, home telephone, and family member information contained in the submitted documents belong to volunteers for AACOG. Such individuals are not employees or officials of a governmental body, and therefore, we find that section 552.117 is not applicable to this information.

You also claim that some of the submitted information is excepted under section 552.122. Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); Open Records Decision No. 626 at 8 (1994).

Having reviewed the submitted test questions and answers, we find that the questions and corresponding answers are "test items" as contemplated by section 552.122(b). Therefore, you may withhold all of the items in the submitted test under section 552.122(b).

Finally, we note that the submitted information contains e-mail addresses. Section 552.137 of the Government Code provides:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Act of June 2, 2003, 78th Leg., R.S., ch. 1089, § 1, 2003 Tex. Sess. Law Serv. 3124 (to be codified as amendment to Gov't Code § 552.137). Section 552.137 requires a governmental body to withhold certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with the governmental body, unless the members of the public with whom the e-mail addresses are associated have affirmatively consented

to their release. We note, however, that section 552.137 does not apply to the work e-mail addresses of officers or employees of a governmental body, a website address or uniform resource locator, or the general e-mail address of a business. E-mail addresses within the scope of section 552.137(c) are also not excepted from disclosure under section 552.137.

In this instance, all of the submitted e-mail addresses are either the work e-mail addresses of officers or employees of AACOG, to which section 552.137 does not apply, or belong to the requestor, who has a special right of access to his own information that would normally be protected under section 552.137. *See* Gov't Code § 552.023 (person or person's authorized representative has a special right of access to information that is protected by laws intended to protect person's privacy). Thus, none of the submitted e-mail addresses may be withheld under section 552.137.

In summary, you must withhold the information we have marked pursuant to section 552.101 and common-law privacy. You may withhold the submitted test questions and answers under section 552.122. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Bates", written in a cursive style.

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/lmt

Ref: ID# 189844

Enc. Submitted documents

c: Mr. Lamont G. Smith
201 Green Oak Dr.
Kerrville, TX 78028
(w/o enclosures)